



IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

LEGISLATIVE SERVICES AGENCY

OCTOBER 1, 2003

2003 INTERIM No. 10

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Iowa Legislative Interim Calendar and Briefing is published by the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566. Pre-recorded Interim Schedule (515) 281-5869.

October

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Tuesday, October 7, 2003

Judicial District and Judicial Resources Study Committee

10:00 a.m., Room 22, Statehouse

Monday, October 13, 2003

Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

Monday, October 13, 2003

Government Oversight Committee

11:00 a.m., Room 24, Statehouse

Tuesday, October 14, 2003

Government Oversight Committee

Time to be announced, Room 24, Statehouse

Tuesday, October 14, 2003

Public Retirement Systems Interim Committee

10:00 a.m., Room 116, Statehouse

Wednesday, October 15, 2003

Public Retirement Systems Interim Committee

9:00 a.m., Room 116, Statehouse

Tuesday, October 21, 2003

Fiscal Committee of the Legislative Council

10:00 a.m., Room 116, Statehouse

Wednesday, October 22, 2003

Child Welfare Service System Redesign Monitoring Committee

11:00 a.m., Room 24, Statehouse

Distribution of 2003 Interim Calendar

The Interim Calendar and Briefing is regularly distributed each legislative interim. In order to achieve savings in mailing and printing costs, the 2003 Interim Calendar and Briefing will primarily be distributed by electronic mail and Internet posting. The Internet site to access PDF versions of the publication is: <http://www.legis.state.ia.us/GA/80GA/Interim/2003>

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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Judicial District and Judicial Resources Study Committee

Temporary Cochairperson: Senator Donald Redfern

Temporary Cochairperson: Representative Gene Maddox

Location: Room 22, Statehouse

Date & Time: Tuesday, October 7, 2003, 10:00 a.m.

Legislative Services Agency Contacts: Jennifer Acton, Fiscal Services, (515) 281-7846; Joe McEniry, Legal Services, (515) 281-3189; Rachele Hjelmaas, Legal Services, (515) 281-8127

<http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/judredist.htm>

Agenda: Review current law and discuss proposals.

Administrative Rules Review Committee

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jeff Angelo

Location: Room 116, Statehouse

Date & Time: Monday, October 13, 2003, 9:00 a.m.

Legislative Services Agency Contact: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

Agenda: Published in the Iowa Administrative Bulletin (<http://www.legis.state.ia.us/Rules/2003/Bulletin/>).

Government Oversight Committee

Cochairperson: Senator Mary Lundby

Cochairperson: Representative Dwayne Alons

Location: Room 24, Statehouse

Date & Time: Monday, October 13, 2003, at 11:00 a.m., and Tuesday, October 14, 2003, Time to be announced

Legislative Services Agency Contacts: Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764;

Rick Nelson, Legal Services, (515) 242-5822 <http://staffweb.legis.state.ia.us/lfb/committee/oversight/oversight.htm>

Tentative Agenda: To be announced.

Public Retirement Systems Interim Committee

Temporary Cochairperson: Senator Mark Zieman

Temporary Cochairperson: Representative Jeff Elgin

Location: Room 116, Statehouse

Dates & Times: Tuesday, October 14, 2003, at 10:00 a.m., and Wednesday, October 15, 2003, at 9:00 a.m.

Legislative Services Agency Contact: Ed Cook, Legal Services, (515) 281-3994

<http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/pubret03.htm>

Agenda: Review status of four major public systems in Iowa.

Fiscal Committee of the Legislative Council

Cochairperson: Senator Jeff Lamberti

Cochairperson: Representative Bill Dix

Location: Room 116, Statehouse

Date & Time: Tuesday, October 21, 2003, 10:00 a.m.

Legislative Services Agency Contacts: Sue Lerdal, Fiscal Services, (515) 281-7794; Dave Reynolds, Fiscal Services, (515) 281-6934; Mike Goedert, Legal Services Monitor, (515) 281-3922

<http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/fis.htm>

Agenda: To be announced.

Child Welfare Service System Redesign Monitoring Committee

Cochairperson: Senator Maggie Tinsman

Cochairperson: Representative Dave Heaton

Location: Room 24, Statehouse

Date & Time: Wednesday, October 22, 2003, 11:00 a.m.

Legislative Services Agency Contacts: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Lisa Burk, Fiscal Services, (515) 281-7942 <http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/childwel.htm>

Agenda: Review and comment on latest draft of the redesign.



BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

PROPERTY TAX IMPLEMENTATION COMMITTEE

September 3, 2003

Background. The Property Tax Implementation Committee was created in 2003 Iowa Acts, House File 692. The committee membership is comprised of four legislators and various representatives of interested organizations.

House File 692 replaces the current property tax system with a square footage tax on structures and a land tax. It applies to assessment years beginning on or after January 1, 1996. In general, House File 692 directs the Committee to study and make recommendations relating to the land tax and square footage tax enacted in House File 692, the baseline assessment for the square footage tax, and other related provisions. The Committee is to also study and make recommendations on issues relating to implementation of a land tax and square footage tax.

Subcommittees. The Committee created the following four subcommittees: the Counties Subcommittee, the Broad Implementation Issues Subcommittee, the What Property Taxes Pay For Subcommittee, and the Definitions of Categories and Classes Subcommittee. Subcommittee meetings will be scheduled by Senator Bryan Sievers or Representative Jim Kurtenbach, the chairpersons of the full committee.

County Volunteers. Mr. Dick Stradley, Iowa Department of Revenue, informed the Committee that four counties had volunteered to participate in data test runs. Those counties are Cerro Gordo, Woodbury, Warren, and Dickinson. The Committee voted to accept the four counties as participants.

Internet Page. No date was set for the next committee meeting or for subcommittee meetings. Information concerning the Committee can be accessed on the Internet.

The Property Tax Implementation Committee website is hosted by the Iowa Department of Revenue at <http://www.state.ia.us/tax/taxlaw/proptaxcomm.html>

LSA Monitor: Susan Crowley, Legal Services, (515) 281-3430

GOVERNMENT OVERSIGHT COMMITTEE

September 16, 2003

Cochairperson: Senator Mary Lundby

Cochairperson: Representative Dwayne Alons

Overview. The primary focus of the meeting concerned presentations relating to performance-based contracting for energy improvements in school districts, public disclosure aspects of a harassment charge within the State Attorney General's Office, a status report regarding discussions between the Iowa Department of Public Health and the Department of Human Services concerning the merits of a potential merger, and an update regarding implementation of the reinvention of state government legislation. Additionally, subcommittee meetings relating to the Iowa Lottery, the use of fly ash as an additive in highway concrete paving, and state fleet management were held.

Energy Efficiency Performance-Based Contracting. Mr. Dave Reynolds, LSA, Fiscal Services, provided a history of interim committee activity and recommendations regarding the concept of using performance-based contracting to achieve increased energy efficiency in schools. Mr. Larry Murphy, representing the Energy Efficiency Coalition, introduced several individuals who addressed aspects of the concept.

Ms. Ann Rosenthal, a Cedar Rapids engineer, presented an overview of the concept, indicating that it involves a contract with private sector entities who design and implement major building technology, energy efficiency, infrastructure, and operational improvements. Revenue bonds may be issued to finance the program, with guaranteed financial and performance results ultimately offsetting the costs of the improvements. Ms. Rosenthal indicated that currently 40 states provide for this funding mechanism, and that it effectively addresses several emerging cost issues facing school districts in Iowa. Individuals representing Alliant Energy and the Federal Energy Management Program also addressed implementation of the concept in other states. Mr. Keith Luchtel, representing Associated Builders and Contractors, provided a contrasting viewpoint regarding the proposal, indicating that the Department of Natural Resources already administers a similar program, and expressed the concern that it could result in sole source contracting to the exclusion of a number of smaller, in-state contracting entities.

Harassment Charge – Attorney General's Office. Mr. Eric Tabor, Chief of Staff, Iowa Attorney General's Office, addressed public disclosure issues in connection with an investigation into sexual harassment charges within the Attorney General's Office. Mr. Tabor indicated that the office had originally adhered to a presumption that employees have a legitimate expectation that personal information in their personnel file will not be released without permission, and that accordingly the identity of the alleged harasser within the office was not publicly disclosed. Mr. Tabor stated, however, that the office has subsequently concluded that this decision had been in error, and that in any future cases involving public funds, the names of accused workers will be made public.



BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Government Oversight Committee continued from Page 3)

Department of Human Services and Iowa Department of Public Health Merger. Ms. Sue Lerdal, LSA, Fiscal Services, distributed a preliminary report regarding program collaboration between the agencies, signed by each agency director. The report focused on areas in which the agencies currently collaborate, and also identified possibilities for future collaboration. Ms. Kate Walton and Ms. Lynh Patterson, legislative liaisons for the Department of Human Services and the Iowa Department of Public Health, respectively, addressed questions and concerns based on the report. Committee discussion included a request that the departments focus in the future on more specifics regarding the prospects for merger and avoid a presumption against that idea from the outset.

Government Reinvention Update. Ms. Lerdal distributed a document summarizing the Reinvention of Government Act. Ms. Lerdal identified certain funding source changes from those which had previously been anticipated, and indicated that it may be unclear whether improved results in charter agencies may be attributed to a reduction in expenses or to increases in revenue.

Subcommittee Meetings

- **Lottery Subcommittee.** Pursuant to Senate File 453, the Iowa Lottery Authority was created and new Iowa code chapter 99G was created to replace former chapter 99E. Previously, the Lottery was under the Department of Revenue and Finance. The lottery subcommittee met to develop questions to ask the Lottery concerning the implications of the new legislation. Questions relating to legislative oversight, budgetary authority, and conflicts of interest were developed for submission to the Lottery Authority. A follow-up meeting of the subcommittee was planned during the next meeting of the Oversight Committee to discuss the authority's responses to the questions. (LSA Monitor, Ed Cook, Legal Services, (515) 281-3994)
- **Fleet Management Subcommittee.** The Fleet Management Subcommittee met with representatives from the regents institutions, a private leasing vehicle company, as well as the Department of Administrative Services concerning state vehicle management. Representatives from the major regents institutions discussed how vehicles were acquired, serviced, maintained, and leased by their institution. Each of the representatives indicated that they have reduced the number of vehicles they own for lease by entering into an agreement with a private vehicle leasing company to provide vehicles during those periods of the year when vehicle usage is heavy. (LSA Monitor, Ed Cook, Legal Services, (515) 281-3994)
- **Fly Ash Subcommittee.** During the 2003 Legislative Session the Oversight Committee sponsored legislation relating to increasing the use of fly ash in highway concrete paving and requiring a study. In response to the proposed bill, interested parties, including representatives from the Iowa Department of Transportation, electric utility companies, fly ash and cement suppliers, and concrete paving contractors, formed a working group to consider expanding Iowa's use of fly ash and to investigate the practices of other states. Members of the working group reported that progress had been made as a result of their collaboration and pointed to initiatives currently underway in Iowa to determine optimal use of fly ash in both highway and bike trail paving. The Center for Concrete Paving Technology at Iowa State University, which has attracted regional and national attention for its role in paving research, is working with industry and government professionals to develop a workable concrete mix that provides long-term performance. Subcommittee members acknowledged that a legislative mandate on the use of fly ash might not be needed, due to the ongoing efforts of IDOT and industry representatives. (LSA Monitor, Diane Ackerman, Legal Services, (515) 281-7257)
- **Regulatory Reform Subcommittee.** A formal subcommittee meeting was not held. It was determined that the subcommittee would reconvene at some point in the future when all subcommittee members could be present for the discussion. (LSA Monitor, Ann Ver Heul, Legal Services, (515) 281-3837)

Next Meeting. The next meeting is scheduled for October 13 and 14, 2003.

LSA Staff: Doug Wulf, Fiscal Services (515) 281-3250, Sam Leto, Fiscal Services (515) 281-6764; Rick Nelson, Legal Services, (515) 242-5822

<http://staffweb.legis.state.ia.us/lfb/committee/oversight/oversight.htm>

IOWA STATE BOARD OF REGENTS

September 17, 2003

Tuition Policies.

- **Background.** On November 14, 2002, the State Board of Regents approved a proposal to consider studies of the board's tuition policy and the related statutory timing provisions. During the board's September 17, 2003, meeting, the board considered a memorandum on tuition policies prepared by the board office and heard testimony from student government officers from the three regents universities. Executive Director Greg Nichols noted that tuition



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INFORMATION REGARDING RECENT ACTIVITIES

(Iowa State Board of Regents continued from Page 4)

policies have not been reviewed or modified for six years, with the exception of the board's vote in the previous year to approve a new minimum tuition set-aside for financial aid of 15 percent of gross tuition revenues with direction to the universities to focus on need-based aid, effective with the summer session 2003 for the 2003-04 academic year.

- **Issues.** The memorandum identified four tuition-related categories of issues for board discussion: statutory timing (Iowa Code section 262.9, subsections 18 and 23, require the board to have a policy for the establishment of tuition rates that provides some predictability for assessing and anticipating changes and, when increasing tuition or mandatory fees, to take action no sooner than 30 days after notification of the proposed increase to presiding officers of each student government organization no later than the November preceding the academic year in which the increase would apply), basis for charging tuition (for example, differential tuition, which is based upon a student's academic level, chosen field of study, type of course or program, or number of full-time credit hours), student fees, and evaluation factors.
- **University Presidents.** ISU President Gregory Geoffroy described the merits of differential tuition and identified other universities around the country that base tuition on the number of credit hours; by class, charging more of juniors and seniors; or by major or discipline. SUI President David Skorton emphasized the importance of predictability and of maintaining access and affordability in establishing tuition rates. UNI President Robert Koob stated that the board needs to decide whether to fight for accessible public education. He also stated that students should have the freedom to explore in a protected environment.
- **Student Representatives.** Student government representative Michael Banasiak of ISU said his organization would ask the Legislature for a 10 percent increase in state support; SUI's student government representative, Nate Green, noted that his organization would continue to promote the conditional tuition plan it proposed two years ago, encouraged the board's study of new ideas, urged predictability for student tuition rates, and suggested that while university tuitions are still comparatively low, so are wages in Iowa; and UNI's student government representative Emiliano Lerda also supported predictability, public accessibility, and the board's discussion of tuition differentials, but offered that the only acceptable change would be an additional fee for taking more than 18 credit hours in a semester.
- **Board Members.** Board member John Forsyth indicated his support for greater flexibility and proposed that the statute be amended to strike the prior year requirement. Board member Dr. Deborah Turner noted that any changes to the tuition policy should be revenue-neutral. She asked that the board office study whether retention is greater in the junior and senior years. She also warned that any difference in pricing between the universities could lead the public to believe that the highest priced university is by implication the best university. Board member David Neil opined that differential tuitions are simply a cost-shift, and noted that while he questioned whether the concept would work in practice, he supported study of the idea. The board asked the universities to form internal tuition policy study groups and to return to the board in February with their data and recommendations.

Reallocation Policy. The board approved a proposal that each institution reallocate at least 1 percent of its continuing base general fund budget for focused strategic initiatives and that it review the reallocation policy at least every five years.

FY 2004-2005 State Funding Requests. With little comment the board approved the tuition replacement appropriations requests and the five-year capital plans. The board also approved the board office recommended action for approval of capital improvement budget requests for FY 2004-2005 after approving Mr. Forsyth's motion to increase the priority for fire safety. With regard to incremental salary appropriations requests for FY 2004-2005, Dr. Koob noted that the success of the institutions is dependent upon the amount the Legislature provides for salaries and warned that if funding is insufficient, programs must be cannibalized; and Dr. Skorton noted that SUI is third from the bottom of its peer group in salaries, while Dr. Geoffroy observed that ISU is next to last in its peer group. The board authorized the board office and regent institutions to actively seek state funding for incremental salary needs for FY 2004-2005 as its highest priority for requested appropriations, though the board office did not provide a dollar amount. The board also addressed a recommended action to restore the base operating appropriations for FY 2004-2005 by accepting Mr. Forsyth's proposal to make it the board's highest priority in this area to request state assistance to restore vacant or unfilled faculty positions, its next priority funding for incremental strategic initiatives, and, if moneys become available, funding for a number of areas to enhance public service.

LSA Monitor: Kathy Hanlon, Legal Services (515) 281-3847



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INFORMATION REGARDING RECENT ACTIVITIES

FISCAL COMMITTEE OF THE LEGISLATIVE COUNCIL

September 23, 2003

Cochairperson: Senator Jeff Lamberti

Cochairperson: Representative Bill Dix

Revenue Update. Due primarily to an unanticipated reduction in accrued revenues, it is projected that the FY 2002-2003 General Fund ending balance will show a deficit of \$63.9 million versus the budgeted surplus of \$2 million. Mr. Dennis Prouty, Director, Legislative Services Agency (LSA), discussed the issue of accrued revenues. Historically, the Department of Revenue (DOR) does not have access to accrual information until September.

To put this in context, Mr. Prouty added that based on the total budget, the \$62.1 million figure represents only a 1.2 percent variance from the projection and other states typically allow for a 3-5 percent variance in projections. Mr. Prouty noted that the original projected General Fund ending balance of \$2 million was not adequate to absorb the variation in the estimate. Mr. Prouty suggested that the projected ending fund balance for FY 2003-2004 of \$81.8 million will provide a larger cushion. Mr. Prouty stated that the shortfall does not cause a legal problem vis a vis the state having a balanced budget because there are sufficient reserves to cover the shortfall, but the Governor and the General Assembly must determine the source of funds to tap.

Mr. Mike Ralston, DOR, added that next year, DOR will access accrual information in July, to allow DOR to move forward more quickly.

Expenditure Limitation. The Committee discussed the possibility of moving the state expenditure limitation from 99 to 98 percent of adjusted revenues to increase the cushion in the General Fund ending balance. Mr. Prouty suggested that there are a variety of factors that go into determining the projection, and that it would be difficult to choose a percentage that would be failsafe. Mr. Jeff Robinson, LSA, Fiscal Services, provided information regarding the possible reasons for the decrease in accrued revenue, including decreases in sales and use tax revenues and in corporate tax revenues. It was noted that new funding for additional tools to assist DOR in this process was proposed in the 2003 Legislative Session, but was not approved.

Built-In Increases and Decreases. Mr. Dave Reynolds, LSA, Fiscal Services, reviewed a listing of projected FY 2004-2005 incremental built-in General Fund expenditure increases and decreases; the projections total \$236.1 million. The items include reductions in expenditures for property tax replacement; expenditures for the Medicaid Program initially projected to increase by \$54 million, however, the newest departmental estimate is \$73 million; and an increase of \$83.8 million for funding the state employee collective bargaining salary package.

Motor Fuel and Natural Gas Price Increases. Ms. Mary Beth Mellick, LSA, Fiscal Services, noted that the price of natural gas is expected to increase by approximately 13 percent compared with FY 2002-2003 and motor fuel prices by 6.9 percent. The projections for increased state expenditures for natural gas and motor fuel for FY 2003-2004 are, respectively, \$936,000 and \$460,000.

Appropriations Transfers. The following information was provided concerning appropriation transfers of FY 2003-2004 funds:

- The transfer of \$499,000 from various Department of Inspections and Appeals programs to the indigent defense program.
- The transfer of \$80,000 from the Department of Revenue to the Governor's general office account to cover greater than anticipated expenses in that account.

DHS K-12 Institutions. Ms. Lisa Burk, LSA, Fiscal Services, explained that 2003 Iowa Acts, Senate File 453, changed the funding for education for children residing in Department of Human Services (DHS) institutions and introduced Dr. Lee Tack, Department of Education (DOE) to provide additional information. In previous years, the education funding was provided as a direct appropriation to DHS, but under the new system, funding is provided as part of state foundation aid. A detailed explanation of the funding flows under the new approach was provided.

Federal Department of Justice Investigation at State Resource Centers. Ms. Sally Cunningham, DHS, discussed the recent federal Department of Justice (DOJ) reviews of the Woodward and Glenwood State Resource Centers. In March 2003, the state received a settlement agreement from DOJ. In July 2003, DHS entered into negotiations with DOJ regarding the agreement. DHS received an appropriation of approximately \$2 million to be used to begin to address the issues identified to date. Ms. Cunningham noted that it is hoped that a final settlement will be reached in the next few months. She provided that up to \$5 million of the Senior Living Trust Fund appropriation will be used to provide less restrictive community-based services for this population in FY 2003-2004.



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(Fiscal Committee of the Legislative Council continued from Page 6)

Medicaid, Healthy and Well Kids in Iowa (hawk-i), Preferred Drug Plan Legislation. Ms. Jennifer Vermeer, LSA, Fiscal Services, provided all of the following information:

- **Medicaid.** The most recent information demonstrates a \$28 million surplus in the program for FY 2002-2003, with at least \$17 million of the surplus due to the enhanced federal match rate. The surplus will revert to the Senior Living Trust Fund.
- **Hawk-i.** The FY 2002-2003 year end trust fund balance is approximately \$4.3 million. Representative Shoultz noted that the new hawk-i application form is much more user-friendly.
- **HF 619 Update.** There have not been many new developments regarding 2003 Iowa Acts, House File 619, relating to Medicaid Program savings. However, the Federal Centers for Medicare and Medicaid Services (CMS) have changed the process for approval of state plan amendments. House File 619 includes an intergovernmental transfer relating to physician reimbursements which would potentially provide the state with \$13 million in savings. She noted that even though DHS is confident that the state plan amendment for this initiative is consistent with federal regulations, the environment at CMS regarding such transfers has changed.
- **Preferred Drug List.** DHS has signed a contract for management of the Medicaid preferred drug list. The Kansas City regional office of CMS has approved the contract, but the federal central office has not yet provided approval. However, DHS is moving ahead and hopes to have the program operational by January 1, 2004.

Senior Living Trust Fund. Ms. Lisa Burk, LSA, Fiscal Services, addressed fund balances and explained that if revenues to and expenditures from the fund continue at the same level, the fund should have a negative balance beginning in FY 2005-2006.

Department of Corrections.

Iowa Prison Population Forecast. Mr. Dick Moore and Ms. Lettie Prell, Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning, provided information regarding the 10-year forecast for the Iowa prison population, from 2003-2013. The female inmate population is expected to exceed capacity by 34.2 percent and the male inmate population by 27 percent by mid-year 2005. By mid-year 2013, the female inmate population is projected to exceed capacity by approximately 78.7 percent and the male population by approximately 60 percent. There was extensive discussion of reasons for the increases, budget adjustments, and federal oversight.

Facility Updates. Mr. John Baldwin, Department of Corrections, provided an update on facility expansion at Luster Heights located in Northeast Iowa, and at Clarinda:

- With regard to Luster Heights, which is a cooperative effort to provide a substance abuse treatment component, Mr. Baldwin stated that the facility should be operational by mid-October. Offenders would be able to work during the day, receive treatment in the evenings, and remain at home at night.
- With regard to Clarinda, the lodge which housed Department of Human Services employees will be converted to house approximately 225 minimum security inmates. Mr. Baldwin noted that because the Department of Corrections volunteered to be a charter agency, this project is behind schedule, but will be operational May 2004.
- Both projects are on budget.

Wind Energy Generation. Mr. John Pearce, Utilities Specialist, Utilities Division, Department of Commerce, provided that Iowa ranks third in the nation, behind California and Texas in wind generating capacity. Mr. Pearce discussed federal incentives and state mandates and incentives for wind generation, which include tax incentives, direct payments, and revolving loans.

Reinvent Government Progress. Mr. Doug Wulf, LSA, Fiscal Services, reviewed the progress report for the reinvention of government initiatives. He noted that the finalized charter agency agreements have not been released as yet, and that the Department of Public Safety might withdraw as a charter agency due to receipt of fewer funds from the federal government related to the change in law regarding blood alcohol levels. Mr. Wulf stated that until the charter agreements are finalized, the determination of whether savings are generated from appropriation decreases or revenue increases will not be known. He noted that the child welfare redesign process is moving along and that the plan will soon be finalized. Mr. Wulf provided that the Public Strategies Group (PSG) consulting firm has been paid \$2.85 million to date and that if the strategies implemented are successful, PSG will receive an addition \$2.85 million.

Review of ICN Privatization Options. Mr. John Gillispie, Executive Director, ICN, provided an overview of the options being considered by the ad hoc group formed at the request of the Governor to review the future of the ICN. Of the various proposals put forth by interested parties, the Iowa Association of Municipal Utilities proposal is still being considered. It was determined that the proposal from Qwest would not be considered, as this proposal had previously been vetoed by the Governor, and another proposal providing for bidding out to the private sector was eliminated.



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(Fiscal Committee of the Legislative Council continued from Page 7)

because the ICN already bids services out to the private sector with the exception of video services. A possible alternative to the sale of the ICN is the sale of certain network assets and retention by the ICN of the business. Fiber optic lines located outside of the Des Moines metro area and some core backbone equipment could be sold to the private sector. The state would retain rights to use capacity on the fiber that was sold. The ad hoc group has not been provided a timeline for completion of its work, but has completed a report comparing the various concepts.

Next Meeting. The next meeting is scheduled for October 21, 2003.

LSA Staff: Sue Lerdal, Fiscal Services, (515) 281-7794; Dave Reynolds, Fiscal Services, (515) 281-6934; Mike Goedert, Legal Services Monitor, (515) 281-392

<http://www.legis.state.ia.us/GA/80GA/Interim/2003/comminfo/fis.htm>

LEGAL UPDATES

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs, in an objective, nonpartisan manner, of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE: Breach of Confidentiality – Private Cause of Action Denied

Filed by the Iowa Court of Appeals

April 30, 2003

Jay Dee Eickemeyer v. State of Iowa, No. 3-032/02-0869

<http://www.judicial.state.ia.us/appeals/opinions/20030430/02-0869.doc>

Background. The Iowa District Court for Page County considered a case in which a claim against the State of Iowa based upon a breach of confidentiality was asserted. The plaintiff, Jay Dee Eickemeyer, had filed several complaints with the Iowa Department of Inspections and Appeals against Home Sweet Home, Inc. pursuant to Iowa Code chapter 135C, which provides remedies and penalties for the violation of provisions governing the licensure and regulation of health care facilities providing housing for the aged, infirm, convalescent, and the mentally or physically dependent. During the course of the resultant investigation by the department, the identity of the complainant was disclosed to Home Sweet Home.

District Court Proceedings. The plaintiff's petition alleged a breach of confidentiality violating Iowa Code section 135C.37, and a common law breach of confidentiality negligence claim. Iowa Code section 135C.37 specifically states that:

The name of the person who files a complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the department employees involved in the investigation of the complaint.

The district court granted the State's motion for summary judgment on the basis that the statute did not provide for a private cause of action for breach of confidentiality, and that the State does not recognize a common law breach of confidentiality negligence action.

Appellate Decision. The Court determined that Iowa Code section 135C.37 does not explicitly provide a private cause of action for a breach of confidentiality, and therefore examined whether the statute contains any indication of legislative intent to create or deny a private cause of action, or whether such a cause of action would be consistent with the underlying purpose of the statute. The Court found that a private cause would be consistent with the statute's underlying purpose of safeguarding the care and housing of individuals to whom the statute applies. The Court determined, however, that there was no indication of legislative intent to create a remedy for breach of the duty to keep the identity of complainants confidential, and that by its silence the Legislature signaled an intention not to provide such a remedy. In reaching its conclusion, the Court noted that the Legislature has in several instances expressly established by statute a private cause of action for breach of a statutory duty.

The Court of Appeals affirmed the district court's grant of summary judgment in favor of the State.

LSA Contact: Richard Nelson, Legal Services (515) 242-5822



BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

LEGAL UPDATE: Civil Commitment of Criminal Offender
Filed by the Iowa Supreme Court
July 16, 2003

State v. Huss, No. 32-02-0427

<http://www.judicial.state.ia.us/supreme/opinions>

Factual and Procedural Background. In 1986, the defendant, Loren Glenn Huss, was charged and convicted of the brutal and bizarre murder of his girlfriend, Marilyn Sheets. After years of legal challenges, Huss's conviction was overturned and he was found not guilty by reason of insanity, which decision was later affirmed on appeal. State v. Huss, 657 N.W.2d 447, 454 (Iowa 2003). Pursuant to Iowa Rule of Criminal Procedure 2.22(8), the Court ordered Huss committed to a state mental health institute or other appropriate facility for a complete psychiatric exam. Despite a psychiatric evaluation from the Iowa Medical and Classification Center (IMCC) which opined that Huss's present mental condition does not pose a danger to himself or others, the district court concluded that Huss remains mentally ill and dangerous and ordered Huss's continued commitment. It is from this decision that Huss appeals.

Issues on Appeal.

1. What standard of appellate review is appropriate in cases of acquittal on ground of insanity governed by Iowa Rule of Criminal Procedure 2.22?
2. Whether the State met the requisite burden of proof to justify Huss's continued commitment.

Analysis.

1. **Scope of Appellate Review – Burden of Proof.** As a threshold issue, the defendant first challenged the scope of the Iowa Supreme Court's review. The Court noted that neither the requisite burden nor the standard of proof is referred to in the applicable procedural rule, Iowa Rule of Criminal Procedure 2.22(8). The Court concluded that once the IMCC psychiatric evaluation indicated Huss was no longer mentally ill and dangerous, the burden of proof shifted to the State to prove, by clear and convincing evidence, that he was mentally ill and dangerous and subject to continued commitment. The Court found this burden of proof to be consistent with the burden of proof resting on the applicant in a chapter 229 involuntary civil commitment proceeding, and with the heavier burden of proof imposed on the State in a chapter 229A sexually violent predator case.
2. **Sufficiency of the Evidence.**
 - a. **Mentally Ill.** Huss challenged the district court's conclusion that mental illness in remission is the same as mental illness, since the record on review indicated he displayed no symptoms of his disorder at the time of the psychiatric evaluation and is receiving no treatment for it. The Iowa Supreme Court disagreed, citing psychiatric material in evidence that indicated that persons like Huss who have been diagnosed with bipolar disorder can suffer the effects of the illness at any point during the person's lifetime. Based upon this evidence, the Court concluded that the record adequately supported the district court's conclusion that the defendant continues to be mentally ill.
 - b. **Dangerous to Self or Others.** Huss next challenged the district court's conclusion that he continues to present a danger to himself or others, particularly in light of evidence in the record that indicates he has been free of any symptoms of mental illness and a model prisoner for the past 17 years. In determining what definition of dangerousness should apply in a case such as this, the Court focused on both statutory and constitutional criteria guiding commitment decisions, and adopted the "recent overt act, attempt or threat" criterion in civil commitment cases. The Court found that the lack of any evidence indicating Huss had committed a recent act of substantial harm to himself or others to be significant.

Conclusion. The Iowa Supreme Court held that Huss's continued commitment under Iowa Rule of Criminal Procedure 2.22(8), after acquittal on ground of insanity, cannot be justified and reversed the judgment of the district court with directions to remand the case to the district court for an order of discharge.

Postscript. Despite the Court's ruling, Huss continues to be confined as a sexually violent predator pursuant to Iowa Code chapter 229A, a determination made by the State in 2002. As a sexually violent predator Huss will be confined and treated indefinitely at the unit operated by the Department of Human Services for the treatment of sexually violent predators for the murder in the instant case, for an assault on a woman in 1980, and for his participation in a 1984 gang-rape of a teenage girl. Huss's appeal challenging his confinement as a sexually violent predator is pending.

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